

REMARKS

Responsive to the action dated October 3, 2003, the Applicant elects the invention of Group I, inclusive of claims 1-21, 24-35. The Applicant has amended claims 23 and 24 to depend from a claim within Group I. Accordingly, the Applicant respectfully requests reconsideration and the rejoining of amended claims 23 and 24 to Group I.

New claims 39-41 are within Group I since they also include a promoter regulated by a metabolite, the promoter being operably linked to a sequence encoding a heterologous polypeptide.

New claims 36-38 and 42-48 depend from other claims that the Examiner assigned to Group I. Since these claims incorporate the features of claims already under examination, they would be allowable if the generic claim from which they depend is allowed.

The Examiner has also required an election of species – a promoter and a heterologous gene. The Applicant elects a promoter regulated by *ntrC* for the promoter species and a gene that encodes an enzyme for isoprenoid production for the species of the heterologous gene. If an even narrower species of the promoter is required, the Applicant elects *glnAp2*. If an even narrower species of the heterologous gene is required, the Applicant elects a gene that encodes an isopentenyl diphosphate isomerase.

However, the Applicant traverses the species election since PCT Rule 13.1 (referring to a “general inventive concept”) does not require nor authorize election of a species in the singular and narrow sense of a requirement for species election under 37 C.F.R. 1.141. A species is not a “general inventive concept.”

All amendments and claim cancellations are made without prejudice. Support for the amendments to claim 1 can be found in the original claims, e.g., claim 6, and the specification. Support for the amendment to claim 9 can be found, e.g., on page 3 at lines 15-16. Support for claim 36 can be found, e.g., at page 1, line 27-29. Support for claims 37, 38, and 40 can be found, e.g., at page 3, line 23. Support for claim 44 can be found, e.g., at page 3, line 8. Support for claim 47 can be found, e.g., at page 2, line 28. Support for claim 48 can be found, e.g., at page 6, line 23-24.

Applicant : James C. Liao
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Related Applications. The Applicant advises the Examiner that this application is related to 09/626,612, in which a Notice of Allowance has been received. The Applicant may also file one or more continuing applications that claim priority to 09/626,612 or to this application, the prosecution of which should be monitored by the Examiner.

Enclosed is a One-Month Petition for Extension of Time. Please apply any charges or credits to Deposit Account No. 06-1050, referencing attorney docket number 06497-013002.

Respectfully submitted,

Date: 12-3-03

Y. Rocky Tsao
Y. Rocky Tsao
Reg. No. 34,053

Fish & Richardson P.C.
225 Franklin Street
Boston, MA 02110-2804
Telephone: (617) 542-5070
Facsimile: (617) 542-8906